

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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WOLFRAM KOEPPE,

Plaintiffs,

-against-

DEUTSCHE LUFTHANSA AG,

**ANSWER**

Docket No.: 08 CV 0048  
(Holwell, J.)

Defendants.

The defendant, Deutsche Lufthansa AG, by the undersigned, as and for its answer to the Complaint of the plaintiff herein, alleges:

1. Denies having any knowledge or information thereof sufficient to form a belief as to the truth of each and every allegation contained in the paragraph(s) of the Verified Complaint therein designated 1 referring all questions of law to the Court except admits that the defendant, Deutsche Lufthansa AG, is a foreign corporation duly organized and existing under the laws of the Federal Republic of Germany with its principal place of business in Germany and transacts business within the State of New York.

2. Denies having any knowledge or information thereof sufficient to form a belief as to the truth of each and every allegation contained in the paragraph(s) of the Verified Complaint therein designated 2 except admits that the defendant, Deutsche Lufthansa AG is engaged in the transportation of passengers by air.

3. Denies having any knowledge or information thereof sufficient to form a belief as to the truth of each and every allegation contained in the paragraph(s) of the Verified Complaint therein designated 3 except admits that on May 30, 2006 the plaintiff was a passenger onboard a jet aircraft operated by Deutsche Lufthansa AG.

4. Denies having any knowledge or information thereof sufficient to form a belief as to the truth of each and every allegation contained in the paragraph(s) of the Verified Complaint therein designated 4 except admits that on May 30, 2006 plaintiff was a passenger onboard a jet aircraft operated by Deutsche Lufthansa AG.

5. Denies having any knowledge or information thereof sufficient to form a belief as to the truth of each and every allegation contained in the paragraph(s) of the Verified Complaint therein designated 5 except admits that on May 30, 2006 plaintiff was a passenger onboard a jet aircraft operated by Deutsche Lufthansa AG.

6. Denies each and every allegation contained in the paragraph of the Complaint therein designated 6.

7. Denies having any knowledge or information thereof sufficient to form a belief as to the truth of each and every allegation contained in the paragraph(s) of the Verified Complaint therein designated 7 referring all questions of law to the Court.

8. Denies each and every allegation contained in the paragraph of the Complaint therein designated 8.

**IN ANSWER TO THE CLAIM FOR ABSOLUTE LIABILITY AGAINST LUFTHANSA**

9. The defendant repeats, reiterates and realleges each and every denial contained in paragraphs 1 through 8 of this answer with the same force and effect as if each were more fully set forth herein at length.

10. Denies each and every allegation contained in paragraph 10 of the Complaint referring all questions of law to the Court.

11. Denies having any knowledge or information thereof sufficient to form a belief as to the truth of each and every allegation contained in the paragraph(s) of the Verified Complaint therein designated 11.

12. Denies having any knowledge or information thereof sufficient to form a belief as to the truth of each and every allegation contained in the paragraph(s) of the Verified Complaint therein designated 12 referring all questions of law to the Court and respectfully refers the Court to the IATA Intercarrier Agreement for the terms and conditions thereof.

13. Denies having any knowledge or information thereof sufficient to form a belief as to the truth of each and every allegation contained in the paragraph(s) of the Verified Complaint therein designated 13 referring all questions of law to the Court and respectfully refers the Court to the Measures to Implement the Interim Agreement for the terms and conditions thereof.

14. Denies having any knowledge or information thereof sufficient to form a belief as to the truth of each and every allegation contained in the paragraph(s) of the Verified Complaint therein designated 14 referring all questions of law to the court and respectfully refers the court to the Agreements for the terms and conditions thereof.

15. Denies each and every allegation contained in the paragraph of the Complaint designated 15 referring all questions of law to the court and respectfully refers the Court to the documents for the terms and conditions thereof.

16. Denies having any knowledge or information thereof sufficient to form a belief as to the truth of each and every allegation contained in the paragraph(s) of the Verified Complaint therein designated 16 except admits that on May 30, 2006 the plaintiff was a passenger on a certain jet aircraft operated by Deutsche Lufthansa AG.

17. Denies having any knowledge or information thereof sufficient to form a belief as to the truth of each and every allegation contained in the paragraph(s) of the Verified Complaint therein designated 17.

18. Denies having any knowledge or information thereof sufficient to form a belief as to the truth of each and every allegation contained in the paragraph(s) of the Verified Complaint therein designated 18.

19. Denies having any knowledge or information thereof sufficient to form a belief as to the truth of each and every allegation contained in the paragraph(s) of the Verified Complaint therein designated 19.

20. Denies having any knowledge or information thereof sufficient to form a belief as to the truth of each and every allegation contained in the paragraph(s) of the Verified Complaint therein designated 20 of the Complaint referring all questions of law to the Court.

21. Denies having any knowledge or information thereof sufficient to form a belief as to the truth of each and every allegation contained in the paragraph(s) of the Verified Complaint therein designated 21 of the Complaint referring all questions of law to the Court and respectfully refers the Court to the documents for the terms and conditions thereof.

22. Denies each and every allegation contained in paragraph 22 of the Complaint.

23. Denies each and every allegation contained in paragraph 23 of the Complaint.

**AS AND FOR A FIRST SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE**

24. The Complaint fails to state a claim upon which relief may be granted against Deutsche Lufthansa AG.

**AS AND FOR A SECOND SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE**

25. The Defendant Deutsche Lufthansa AG, was not served with the Summons and Complaint. Therefore, the Court does not have jurisdiction over said defendant.

**AS AND FOR A THIRD SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE**

26. The rights, duties and obligations of the parties herein are governed and controlled by the terms and provisions of the Warsaw Convention, as amended and supplemented, The Montreal Convention, the Conditions of Contract in the passenger ticket, and upon applicable international passenger rules tariff, all of which are incorporated into and establish the "Contract of Carriage" between the parties and the liability, if any of Deutsche Lufthansa AG is limited and/or excluded by reason of the terms of the contract of carriage.

**AS AND FOR A FOURTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE**

27. Pursuant to the provisions of the contract of carriage, Deutsche Lufthansa AG is not liable to the plaintiff herein and/or such liability is limited or excluded because the defendant, Deutsche Lufthansa AG was not negligent in its provision of services pursuant to the contract of carriage and/or it had taken all necessary measures to avoid damage and/or it was impossible for Deutsche Lufthansa AG to take such measures.

**AS AND FOR A FIFTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE**

28. The plaintiff's alleged injuries and alleged damages were caused solely by the plaintiff's own culpable conduct and negligence and were not caused or contributed to by reason of any negligence or other omission or act on the part of the defendant and by reason thereof Deutsche Lufthansa AG can have no liability to the plaintiff or such liability is limited.

**AS AND FOR A SIXTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE**

29. Upon information and belief, the alleged occurrence and alleged damages resulted from an unavoidable accident or an emergency or through conditions and occurrences for which Deutsche Lufthansa AG cannot be held liable or responsible.

**AS AND FOR A SEVENTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE**

30. The plaintiff failed to mitigate the damages allegedly sustained by plaintiff.

**AS AND FOR A EIGHTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE**

31. Any and all of the damages allegedly sustained by the plaintiff were due to plaintiff's culpable conduct, through his negligence and carelessness or omissions and his damages, if any, should be diminished in accordance with the degree of culpability and fault attributed to him.

**AS AND FOR A NINTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE**

32. Upon information and belief, any damages allegedly sustained by the plaintiff were caused solely and proximately by the independent, intervening or superseding acts or omissions of other parties or persons for whose conduct this defendant is not liable or responsible.

**AS AND FOR A TENTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE**

33. The liability of Deutsche Lufthansa AG, if any, with respect to the plaintiff's alleged damages is limited or excluded in accordance with the provisions of the Warsaw Convention, including but not limited to Article 17, Article 20, Article 21 and/or Article 22 of the convention.

**AS AND FOR AN ELEVENTH SEPARATE AND COMPLETE  
AFFIRMATIVE DEFENSE**

34. Plaintiff's claim is barred because plaintiff's alleged damages were not caused by an accident under Article 17 of the Warsaw Convention.

**AS AND FOR A TWELFTH SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE**

35. Plaintiff is unable to establish that any "Accident" occurred within the meaning of Article 17 of the Warsaw Convention and Montreal Convention.

**AS AND FOR A THIRTEENTH SEPARATE AND COMPLETE  
AFFIRMATIVE DEFENSE**

36. Plaintiff's state law claims, if any, are preempted by the federal common law applicable to federally certified air carriers and by 49 U.S.C. §41713.

**AS AND FOR A FOURTEENTH SEPARATE AND COMPLETE  
AFFIRMATIVE DEFENSE**

37. That Lufthansa is not an air carrier subject to the Air Carrier Access Act, 49 U.S.C. §41705 *et. seq.*

**WHEREFORE**, the Defendant(s), Deutsche Lufthansa AG demands demand(s) judgment dismissing the Verified Complaint together with the costs and disbursements.

Dated: Mineola, New York  
March 24, 2008

Yours, etc.  
**GOLDBERG SEGALLA LLP**

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SOUTHERN DISTRICT OF NEW YORK

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Defendants.

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 24, 2008, I electronically filed Defendants' VERIFIED ANSWER with the Clerk of the Southern District Court using its ECF system, which would then electronically notify the following ECF participants on this case:

Kreindler & Kreindler  
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New York, New York 10017

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